

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MICHEAL TAYLOR,

Plaintiff,

-against-

MEMORANDUM & ORDER
15-CV-3656 (JS) (SIL)

MICHEAL [SIC] SPOSATO,

Defendant.

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APPEARANCES

For Plaintiff: Micheal Taylor, pro se
83316053
Metropolitan Detention Center
80 29th Street
Brooklyn, NY 11232

For Defendant: No appearance.

SEYBERT, District Judge:

On June 15, 2015, incarcerated pro se plaintiff Micheal Taylor ("Plaintiff") filed an in forma pauperis Complaint in this Court pursuant to 42 U.S.C. § 1983 ("Section 1983") against the Nassau County Sheriff Michael Sposato ("Sposato" or "Defendant") accompanied by an application to proceed in forma pauperis.

Upon review of the declaration in support of the application to proceed in forma pauperis, the Court finds that Plaintiff is qualified to commence this action without prepayment of the filing fee. See 28 U.S.C. § 1915(a)(1). Therefore, Plaintiff's request to proceed in forma pauperis is GRANTED. However, for the reasons that follow, the Complaint is sua sponte DISMISSED WITHOUT PREJUDICE pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii), 1915A(b)(1) for failure to state a claim for

relief.

BACKGROUND¹

Plaintiff's sparse handwritten Complaint, submitted on a Section 1983 complaint form, alleges, in its entirety:

I was in Nassau County Jail for Ten Months and the whole time I was complaining about the mold the mice and the mice droppings in the food trays as well as the dirty showers. When ever I talked to an area supervisor they would tell me that I didn't have a grievable issue and to stop the complaints. The officers on the unit would deny the unit of recreation and say that it was because of me and that the inmates needed to deal with me. On May 14th, 2014 at 10:15 a.m. while in E2 C45 cell five inmates ran in my cell and assaulted me and no one was ever charged. I was taken to Medical and was told that as long as I didn't have any stab wounds that I was alright. Pictures were taken and I was sent to another unit.²

(Compl. ¶ IV.) Plaintiff claims that, as a result of the alleged assault, he still suffers from "really bad headaches." (Compl. ¶ IV.A.) For relief, Plaintiff seeks to recover a damages award in total sum of \$ 5 million for "pain, suffering [and] mental and physical damage." (Compl. ¶ V.)

¹ The following facts are taken from Plaintiff's Complaint and are presumed to be true for the purpose of this Memorandum and Order.

² Plaintiff's allegations have been reproduced here exactly as they appear in the Complaint. Errors in spelling, punctuation, and grammar have not been corrected or noted.

DISCUSSION

I. In Forma Pauperis Application

Upon review of Plaintiff's declaration in support of the application to proceed in forma pauperis, the Court finds that Plaintiff is qualified to commence this action without prepayment of the filing fees. See 28 U.S.C. § 1915(a)(1). Therefore, Plaintiff's request to proceed in forma pauperis is GRANTED.

II. Application of 28 U.S.C. § 1915

Section 1915 of Title 28 requires a district court to dismiss an in forma pauperis complaint if the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(B)(i)-(iii), 1915A(b). The Court is required to dismiss the action as soon as it makes such a determination. See id. § 1915A(b).

Courts are obliged to construe the pleadings of a pro se plaintiff liberally. See Sealed Plaintiff v. Sealed Defendant, 537 F.3d 185, 191 (2d Cir. 2008); McEachin v. McGuinnis, 357 F.3d 197, 200 (2d Cir. 2004). However, a complaint must plead sufficient facts to "state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974, 167 L. Ed. 2d 929 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the

misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1950, 173 L. Ed. 2d 868 (2009) (citations omitted). The plausibility standard requires “more than a sheer possibility that a defendant has acted unlawfully.” Id. at 678; accord Wilson v. Merrill Lynch & Co., Inc., 671 F.3d 120, 128 (2d Cir. 2011). While “‘detailed factual allegations’” are not required, “[a] pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555).

III. Section 1983

Section 1983 provides that

[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured

42 U.S.C. § 1983; accord Rehberg v. Paulk, --- U.S. ----, 132 S. Ct. 1497, 1501-02, 182 L. Ed. 2d 593 (2012). To state a claim under Section 1983, a plaintiff must “‘allege that (1) the challenged conduct was attributable at least in part to a person who was acting under color of state law and (2) the conduct deprived the plaintiff of a right guaranteed under the Constitution of the United States.’” Rae v. Cnty. of Suffolk, 693 F. Supp. 2d 217, 223 (E.D.N.Y. 2010) (quoting Snider v. Dylag, 188 F.3d 51, 53 (2d Cir. 1999)).

In order to state a claim for relief under Section 1983 against an individual defendant, a plaintiff must allege the personal involvement of the defendant in the alleged constitutional deprivation. Farid v. Elle, 593 F.3d 233, 249 (2d Cir. 2010). The Supreme Court held in Iqbal that “[b]ecause vicarious liability is inapplicable to . . . [section] 1983 suits, a plaintiff must plead that each Government-official defendant, through the official’s own individual actions, has violated the Constitution.” 556 U.S. at 676. Thus, a “plaintiff asserting a Section 1983 claim against a supervisory official in his individual capacity” must sufficiently plead that the “supervisor was personally involved in the alleged constitutional deprivation.” Rivera v. Fischer, 655 F. Supp. 2d 235, 237 (W.D.N.Y. 2009). A complaint based upon a violation under Section 1983 that does not allege the personal involvement of a defendant fails as a matter of law and should be dismissed. Johnson v. Barney, 360 F. App’x 199, 201 (2d Cir. 2010) (“[Plaintiff’s] claims against [Defendant] failed as a matter of law because [Plaintiff] failed to allege sufficient personal involvement on [Defendant’s] part to make him liable under § 1983.”). See, e.g., Hemmings v. Gorczyk, 134 F.3d 104, 109 n.4 (2d Cir. 1998). With these standards in mind, the Court considers Plaintiff’s claims against the Defendant.

A. Claim Against Sposato

As set forth above, a plausible Section 1983 claim must

allege the personal involvement of the defendant in the alleged constitutional violation. See supra at 4-5; Rivera, 655 F. Supp. 2d at 237; see also Warren v. Goord, 476 F. Supp. 2d 407, 413 (S.D.N.Y. 2007) ("It is well settled in this Circuit that 'personal involvement of defendants in alleged constitutional deprivations is a prerequisite to an award of damages under § 1983.'" (quoting Colon v. Coughlin, 58 F.3d 865, 873 (2d Cir. 1995)) aff'd, 368 F. App'x 161 (2d Cir. 2010)). A supervisor cannot be liable for damage under Section 1983 solely by virtue of being a supervisor because there is no respondeat superior liability under Section 1983. Richardson v. Goord, 347 F.3d 431, 435 (2d Cir. 2003).

Plaintiff's Complaint does not include any factual allegations sufficient to demonstrate personal involvement by Sposato regarding the events alleged in the Complaint and it appears that Plaintiff seeks to impose liability against Sposato based solely on the supervisory position he holds. Indeed, apart from the caption, Sposato is not mentioned in the Complaint (see, generally, Compl. at 1-5.) Wholly absent are any allegations sufficient to establish any personal involvement by Sposato in the unlawful conduct of which Plaintiff complains. Accordingly, Plaintiff's claim against Sposato is not plausible and is DISMISSED WITHOUT PREJUDICE pursuant to 28 U.S.C. §§ 1915(e)(2)(b)(ii); 1915A(b)(1).

IV. Leave to Amend

Given the Second Circuit's guidance that a pro se Complaint should not be dismissed without leave to amend unless amendment would be futile, Ashmore v. Prus, 510 F. App'x 47, 49 (2d Cir. 2013) (citing Cuoco v. Moritsugu, 222 F.3d 99, 112 (2d Cir. 2000)), the Court has carefully considered whether leave to amend is warranted here. Upon such consideration, the Court GRANTS Plaintiff an opportunity to amend his Complaint in accordance with this Memorandum and Order. Plaintiff is cautioned that an Amended Complaint completely replaces the original Complaint and therefore all factual allegations and claims that Plaintiff wishes to pursue must be included in the Amended Complaint. **The Amended Complaint shall be clearly labeled "Amended Complaint" and shall bear the same docket number as this Memorandum and Order, 15-CV-3656, and shall be filed within thirty (30) days from the date of this Memorandum and Order.** If Plaintiff fails to file an Amended Complaint within the time allowed, his Complaint will be dismissed with prejudice and this case will be marked closed.

CONCLUSION

For the reasons set forth above, Plaintiff's application to proceed in forma pauperis is GRANTED, however the Complaint is sua sponte DISMISSED WITHOUT PREJUDICE for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii), 1915A(b)(1). Plaintiff is GRANTED LEAVE TO FILE AN AMENDED COMPLAINT within thirty (30)

days from the date of this Memorandum and Order. If Plaintiff fails to file an Amended Complaint within the time allowed, his Complaint will be dismissed with prejudice and this case will be marked closed.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is DENIED for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444-45, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962).

The Clerk of the Court is directed to mail a copy of this Order to the pro se Plaintiff.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: September 22, 2015
Central Islip, New York